

ORDINANCE 2017-27

AN ORDINANCE ESTABLISHING THE SERVICE, RATES, AND CHARGES FOR THE COLLECTION AND DISPOSAL OF RESIDENTIAL SOLID WASTE, TRASH, GARBAGE, AND REFUSE WITHIN THE TOWN OF WHITESTOWN

WHEREAS, the Town of Whitestown, Indiana (“Town”) is a duly formed municipal corporation governed by its Town Council (“Town Council”); and

WHEREAS, the Town Council finds that by negotiating residential garbage and rubbish removal on a Town-wide basis, the Town may provide for better Town-wide rates, provide for and encourage residential recycling, reduce large truck traffic and disturbances associated therewith, and otherwise benefit the general health and welfare of residents within the Town; and

WHEREAS, pursuant to Indiana law, including Indiana Code §§ 36-9-23 and 36-9-30, the Town may provide for the collection of solid waste, including garbage and rubbish; and

WHEREAS, pursuant to Indiana Code § 36-9-30-5, the Town may contract for the exclusive collection and removal of garbage, refuse, and waste within the Town; and

WHEREAS, Indiana law, including both Indiana Code § 36-9-23-25 and Indiana Code § 36-9-30-21, authorizes the Town to impose fees for services in the collection and disposal of waste; and

WHEREAS, the Town desires to adopt and charge just and equitable fees in order to recoup the cost of providing solid waste and recycling service to residents within the Town; and

WHEREAS, the Town has publicly bid for the collection and disposal of solid waste and recycling services; and

WHEREAS, prior to adoption of this Ordinance, the Town will have provided notice and conducted a public hearing, at which hearing all interested parties had an opportunity to be heard concerning the proposed service, rates, and charges; and

WHEREAS, the Town Council finds that the rates, charges, rules, and regulations established herein are just, equitable, and in the general health and welfare of the Town, and should be established.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, as follows:

Section 1. **Recitals.** The foregoing recitals are incorporated herein by reference.

Section 2. **Definitions.** The following words, terms and phrases, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. Bulky Waste. Such items include, but are not be limited to, stoves, washers, dryers, appliances, furniture, and other items with weights or volumes greater than those allowed for by approved Containers. This term shall also include items that previously contained refrigerants, such as refrigerators, air conditioners, freezers, and dehumidifiers, as long as the Customer can provide the Contractor with appropriate documentation showing that the chlorofluorocarbons (“CFC’s”) or hydrochlorofluorocarbons (“HCFC’s”) have been properly removed by a licensed technician.
- B. Bundles. Rubbish or Yard Waste securely tied together forming an easily handled package not exceeding four feet (4’) in length, eighteen inches (18”) in diameter nor weighing more than forty (40) pounds.
- C. Container(s). Reusable container(s) with wheels used for storing Solid Waste, Yard Waste, and Recycling.
- D. Construction Debris. Waste including building materials resulting from construction, remodeling, repair or demolition operations. The term does not include fluorescent light fixtures, appliances, or regulated asbestos-containing material as defined in CFR 61.
- E. Contractor. Party retained by the Town to perform Solid Waste and Recycling Service.
- F. Council. The Town Council of the Town of Whitestown.
- G. Curbside. Refers to that portion of the right-of-way adjacent to and within five (5) feet of paved, traveled roadways.
- H. Hazardous Materials. Any waste designated as “hazardous” by the United States Environmental Protection Agency or appropriate state agency as the same is now in effect or may hereinafter be amended. This term shall also include any flammable/volatile liquids.
- I. Overage Bags. Bags separately purchased by Customer from the Contractor to place any excess Solid Waste or Yard Waste over the normal Container limit.
- J. Recycling. Recycle waste including Recycling-qualified commingled items such as:
- 1) Aluminum, aluminum foil, and foil pans;
 - 2) Steel, empty steel paint cans, tin, and bimetal cans;
 - 3) Plastics (#1 through #7);
 - 4) Glass containers (amber, clear, blue, and green in color);

- 5) Corrugated cardboard, paperboard, and fiberboard;
 - 6) Newspapers, magazines, phone books, and catalogues; and
 - 7) Additional items as designated by the Town.
- K. Refuse/Garbage. Putrescible animal or vegetable waste resulting from the handling, preparation, cooking, serving, or consumption of food, and including all paper, wrappings, boxes, and cartons used to contain such food.
- L. Resident Drop-Off Program. Solid Waste, Yard Waste, Construction Debris, Bulky Waste, and Recycling delivered to designated centers and disposed of by Contractor.
- M. Residential Unit. A room or series of rooms located within a building or mobile home and forming a single inhabitable unit with facilities, which are used, or are, intended to be used for living, cooking, eating, and sleeping, including:
- 1. Single-Family Residential Unit – A residential dwelling unit separated from any other dwelling unit by open space, and designed for occupancy for one person or family.
 - 2. Multi-Family Residential Unit – A building or related group of buildings not to exceed four (4) units located on the same lot, tract or parcel of real estate, with each dwelling unit being completely independent of the other.
 - 3. Townhouse – Any multi-story single family residential unit sharing one or more common walls with another similar residential unit.
- N. Rubbish/Trash. Nonputrescible waste consisting of matter such as cans, glass, papers, cardboard, plastics, metals, ashes, etc.
- O. Solid Waste. All putrescible and nonputrescible matter, including garbage and rubbish, but excluding hazardous materials and other matter that is specifically excluded.
- P. Solid Waste and Recycling Service. The services to be provided pursuant to this Ordinance.
- Q. Surcharge. A charge for services in addition to the basic User Fee. This charge is assessed against Residents where Solid Waste is of such a nature that it imposes upon the Town a burden greater than that covered by the basic User Fee.
- R. User/Customer. Any person who owns a Residential Unit, or also any person who uses the services provided under this Ordinance. Failure of a person to pay

for the Solid Waste Removal and Recycling Services shall not otherwise constitute an exception to being classified as a User or Customer.

- S. User Fee. The fee, rate, or charge levied on Users/Customers for Solid Waste and Recycling Service. For purposes of this Ordinance, the User Fee shall include all fees, rates, and charges listed on Schedule A (and included in this Ordinance).
- T. Yard Waste. All compost type materials including trees, grass clippings, brush, leaves and Christmas trees, etc.

Section 3. Residential Solid Waste Collection and Recycling Service. There is hereby created a Division of Solid Waste within the Whitestown Department of Public Works. The Public Works Director, or his/her designee, shall be the supervisor of the Division of Solid Waste. The Department of Public Works is hereby authorized and empowered to collect and remove residential Solid Waste and to provide for residential recycling of Solid Waste within the Town as provided herein. The Division of Solid Waste, by and through the Public Works Director, is further authorized and empowered to employ all necessary labor, to procure all necessary vehicles and equipment, and exercise any rights and powers allowed by law to properly administer the provisions of this Ordinance.

Section 4. Benefit. The Division of Solid Waste and provision of services hereunder is considered to benefit every Residential Unit within the Town, and fees shall be billed and collected accordingly.

Section 5. User Fee and Related Charges. Customers shall pay the fees, rates, and charges depicted on Schedule A. A copy of this Ordinance (and the associated User Fee) will be kept on file and available for public inspection at the Town's office. The fees established in this Ordinance shall be extended to cover any additional property that is subsequently served or falls within the same class, without any additional hearing or notice.

Section 6. Effective Date of Service; Persons Subject to Fees. The User Fee fixed by this Ordinance shall become effective against each Residential Unit on October 1, 2017. The User Fee shall be collected from an owner of a Residential Unit and payable as provided in this Ordinance, and regardless of services provided by the Contractor set forth herein. In the event a Customer has an existing contract with a trash removal and/or recycling company, the monthly charges may be delayed until the first available expiration or termination of such contract, but the charges shall commence in any event no later than October 1, 2018.

Section 7. Solicitation of Bids. The Division of Solid Waste, subject to final approval of the applicable contract by the Council, may ask for and accept bids from a private Contractor for the handling of the service described in this Ordinance. Such Contractor(s) shall be subject to the regulations of the Division of Solid Waste as to the manner and method of collection and disposal of solid waste, and any other private person, firm, or corporation engaged in the business of Solid Waste or Recycling collection or disposal within the Town shall be subject to the regulations of the Division of Solid Waste.

Section 8. Solid Waste and Recycling Service Regulations of the Town. The Council may adopt and enforce such regulations as it deems necessary for the safe, economical, and/or efficient management of the Town's Solid Waste and Recycling Service and the collection and disposal of Solid Waste within the Town. The Public Works Director is further authorized to implement policies, rules, and regulations for the provision of service hereunder that are consistent with and in furtherance of any contract approved by the Council and related specifications applicable to the Contractor selected by the Town.

Section 9. Scope of Contractor Services. The Contractor selected by the Town will be responsible for providing Solid Waste and Recycling services from all eligible Residential Units within the geographic limits of the Town. Services provided by the Contractor are generally expected to include:

- A. **Containers.** The Contractor will provide one (1) ninety (96) gallon (plus or minus five (5) gallons) or one (1) sixty-four (64) gallon (plus or minus five (5) gallons) wheeled Containers (rotational molded only) for trash collection to each Residential Unit. A second Container is available to each Residential Unit upon the Customer's request for such second Container. The Contractor will also provide one (1) ninety-six (96) gallon or sixty-four (64) gallon (plus or minus five (5) gallons) wheeled Container for Recycling to each Residential Unit.
- B. **Solid Waste Collection Service.** The Contractor will generally provide for collection of Solid Waste from each qualifying Residential Unit, one (1) time per week, generally as follows:
 1. **Containers.** Each service pickup will consist of a maximum of two (2) Containers per Residential Unit, plus Overage Bags. One (1) Container will be standard and a second Container will be furnished by the Contractor upon the Customer's request.
 2. **Christmas Tree.** The Contractor will pick up one (1) Christmas tree per Residential Unit over and above the Container limit at no additional charge. This Service shall begin on December 26th and end on the Friday closest to January 15th of each year. Christmas trees over 4 feet need to be cut in half for pick up.
 3. **Planned Unit Developments (PUD).** Collection will be on front street Curbside with the exception of those planned unit developments (PUD) and residences where alley facing garages may necessitate alley pickup.
 4. **Declined Collections.** The Contractor may decline to collect Solid Waste for a reason specified in the specifications applicable to the Contractor (i.e., not properly bagged, bundled or contained; improper placement; non-residential Solid Waste; Hazardous Waste; etc.). Where the Contractor has reason to leave Solid Waste uncollected at a Residential Unit, the Contractor is expected to inform the Resident by tagging uncollected Container(s).

C. Yard Waste Collection Service

1. The pickup limit of brush will be included with the Solid Waste Container quantities. A Bundle will be considered as one (1) Container within the Container limit.
 - (a) During the months of March, April, May, October, November, and December, the Contractor should allow from each Residential Unit up to twenty (20) bags per week of leaves and other Yard Waste in lawn bags or tied Bundles. The bags shall be furnished by the Customers at their own cost.
 - (b) Customers must use recyclable bags (ie. non-plastic) or other bags specified by the Contractor for environmentally friendly disposal of Yard Waste.
2. Yard Waste collection will generally be scheduled on the same day as Solid Waste and Recycling Collection.

D. Recycling Collection Service

1. Collection of Recycling from each qualifying Residential Unit will generally be once every two (2) weeks, on the same day as the Solid Waste and Yard Waste collection day.
2. Collection will be Curbside with the exception of those planned unit developments (PUD) and residences where alley facing garages necessitate alley pickup.

E. Overage Bags. If Customers so desire, they may purchase Overage Bags to place any excess Solid Waste or Yard Waste over their normal Container limit. The Contractor will collect payment from the participating Customers for the Overage Bags, which include the additional cost of collection. Overage Bags fully loaded for collection shall not weigh more than forty (40) pounds.

F. Bulky Waste. The Contractor will generally provide services for collection and disposal of Bulky Waste from all eligible Residential Units on an on-call basis. A forty-eight (48) hour advanced notice needs to be given to the Contractor prior to pick-up.

- a. The Contractor is expected to pick-up up to one (1) of such item from each Residential Unit each month. Requested pickup of Bulky Waste items may occur on designated day(s) by the Contractor.
- b. The Contractor is not expected to pick-up Bulky Waste that contain or previously contained refrigerants unless the Customer can provide the Contractor with appropriate written verification showing that the CFC's or

HCFC's have been properly removed by a licensed technician.

G. Solid Waste, Yard Waste, and Recycling does NOT include pick-up of:

1. Solid Waste exceeding the contracted limit per week excluding Overage Bags,
2. Solid Waste not properly contained or placed in Bundles,
3. Solid Waste not appropriately placed for collection,
4. Hazardous Materials,
5. Medical waste of any type including but not limited to medical sharps,
6. Dead animals,
7. Liquids, including, but not limited to, paint, sludge, oil or other chemicals,
8. Bulky Waste containing refrigerants in which the Customer cannot provide the Contractor with appropriate documentation showing that the CFC's or HCFC's have been properly removed by a licensed technician,
9. Solid Waste, Yard Waste or Recycling that are generated from a different location than the Residential Unit,
10. Any Solid Waste and Yard Waste that is specifically excluded by federal, state or local laws from being disposed of in a landfill if that is the type of disposal facility being utilized,
11. Tree limbs or branches exceeding four feet (4') in length or four inches (4") in diameter,
12. Bundles not properly secured or exceeding maximum dimensions,
13. Construction Debris,
14. Bulky Waste when forty-eight (48) hour prior notice is not given.

H. Location and Timing of Collections. Residents shall place Containers close to the curb (or in those areas without curbs, close to the edge of the pavement), to facilitate collection by the Contractor. Residents are responsible for placing Containers and Overage Bags in the appropriate street or alley location before 7:00 a.m. on the designated collection day.

The specific scope of services provided by the Contractor will be governed by the terms of the contract between the Town and the Contractor, including any applicable specifications included as a part of such contract. Additional services may also be made available, including a Resident Drop-Off Program.

Section 9. Solid Waste Fund. There is hereby established the Whitestown Solid Waste Fund for the collection of fees and payment of expenses for Solid Waste and Recycling Service and the Division of Solid Waste. The Fund shall be an enterprise (e.g., utility) fund for which no appropriation is required. The proceeds in such Fund may be disbursed or expended consistent with other utility funds of the Town, and may be used to pay for the costs and expenses associated with the Solid Waste and Recycling Service, the implementation of this Ordinance, the operation and maintenance of the Division of Solid Waste, or for any other lawful purpose.

Section 10. Billing Procedure.

- A. **Generally.** Solid Waste Removal and Recycling Service billings and invoices shall be rendered and collected monthly. The Division of Solid Waste shall make and enforce such rules and regulations as may be deemed necessary for the regulation, collection, and rebating of the User Fee prescribed by this Ordinance.
- B. **Tenants May Be Billed; Right of Owners to Examine Records.** The Division of Solid Waste may, in its sole discretion, permit a User Fee to be billed to a tenant occupying the Residential Unit, unless otherwise instructed in writing by the person who owns the Residential Unit. Such billings shall in no way relieve the owner of the Residential Unit of liability for fees in the event payment is not made as herein required.
- C. **How Delinquencies Arise.** The User Fee for Solid Waste and Recycling Service shall be due and payable on or before the due dates shown on the bills. Any User Fee not paid within seventeen (17) days following mailing or rendering of a bill by the Town (unless a different period is specified by the Division of Solid Waste) shall be considered delinquent. Delinquent User Fees, together with costs and other expenses of collection, may be collected by any lawful remedy, including, where applicable, the placing and foreclosure of liens on real estate, and disconnection of water service.
- D. **Application of Rates and Charges.** Fees established hereunder are payable by the owner of each Residential Unit and/or User of the Solid Waste Recycling Services.
- E. **Collection; Deposit; Penalty; Attorney Fees; and Other Collection Costs.**
1. All payments for trash service must be received in the office of the Town within seventeen (17) days from the billing date stated on the bill. Customers who are habitually late with their payments, more than three times in any calendar year, may, in the Division of Solid Waste's sole discretion, be required to make a deposit, to be applied for all or partial payment of an unpaid outstanding bill, or have their water, sewer, and/or Solid Waste and Recycling Service discontinued. If the total amount of the deposit is not used, the remainder of the deposit will be refunded to the Customer after their service has been discontinued.
 2. The amount of the deposit shall be equal to three (3) months of billing. The deposit shall be obtained to ensure payment and may be applied to delinquent fees of the Customer at any time by the Town. If all or a portion of the deposit is applied to delinquent fees, the Customer shall be required to replenish the required deposit amount within thirty (30) days of prior written notice from the Town to do so. If the Customer fails to fully replenish such deposit, the Town reserves the right to disconnect service to the Customer in accordance with this Ordinance.

3. Any Customer deposits received shall be maintained by the Town in a separate fund. Deposits held by the Town and not applied to delinquent fees for twelve (12) months or more shall accrue interest at a non-compounding rate of 2% per annum.
 4. Failure of a Customer or owner of a Residential Unit to make timely payment shall be subject to a penalty or late charge of ten percent (10%).
 5. Submission of any delinquent account to any attorney for collection shall entitle the Town to recover reasonable attorney's fees, expenses incurred by the Town in the collection process, and court costs, if any.
 6. Delinquent accounts may be collected through a complaint filed by an attorney or a Town-appointed employee as allowed by statute.
 7. The Town reserves the right at all times, notwithstanding any waiver, whether expressed or implied, to pursue any and all available actions it deems necessary, as permitted by law, to collect outstanding or delinquent rates, fees, and charges, including but not limited to filing legal actions in a court of competent jurisdiction and/or filing liens against the Customer's property, and recover its costs, including, but not limited to, its attorney's fees.
- F. **Evidence of Bill Mailing.** The printout sheet from the computer is proof of mailing of the utility bills, and if the Customer claims not to have received a bill then the late charge will stand as a part of his bill if the printout sheet indicates a bill was mailed.
- G. **Returned Checks.** If the Town receives a check for payment of an outstanding User Fee and said check is returned for insufficient funds, the Town may assess an additional fee of the greater of (a) \$27.50 or (b) 5% of the amount due, but not more than \$250, in addition to all other applicable charges.
- H. **Disconnection for Non-Payment.** The Town reserves the right to disconnect/discontinue service for Solid Waste and Recycling, sewer, and/or water service for non-payment of service to the Customer's property. However, water service may not be discontinued to a Customer until the charges have been due and unpaid for at least thirty (30) days. Prior to discontinuance of service, the Town will provide the Customer, by mail, with at least ten (10) days prior written notice of its determination to discontinue service if the unpaid charges are not paid before a date specified in the notice.
- I. **Deposits Applied to Delinquent Charges.** In the event the User Fee is not paid, the deposit and any interest will be forfeited and applied toward such delinquent fees, and services may be discontinued.

J. **General Penalties; Continuing Violations.** The commission of any act prohibited by this Ordinance or by lawful order or regulation of the Town shall be a punishable violation for which, unless there is another specific penalty provided, the penalty shall be a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500). Each day and each violation constitutes a separate offense.

K. **Payments By Credit Card or Other Authorized Payment Method.**

1. The Division of Solid Waste may, in its discretion, accept payment for any User Fee by credit card or any other method authorized under Indiana Code § 36-1-8-11, including check, bank draft, money order, bank card or electronic funds transfer (“Authorized Payment Method”) under and pursuant to the procedures set forth in Indiana Code § 36-1-8-11, as the same may be amended from time to time.
2. If there is a charge to the Town for the use of credit card or other Authorized Payment Method to make such payments, the Town may collect a sum equal to the amount of the charge from the person using the credit card or other Authorized Payment Method.

L. **Overpayment.** Overpayments by the Customer will be applied to the Customer’s account as a credit towards future rates, charges, and fees until such credits are fully depleted.

M. **Partial Payment.** In the event that the Customer tenders only partial payment or any amount less than the total amount of all rates, charges, and fees outstanding, including for other utility service such as water and sewer, and notwithstanding any purported directions from the Customer of which rates, charges, or fees are being paid, payments from the Customer will be applied in the Town’s sole discretion, generally in the following manner:

1. First, payments are applied against any and all fees and other nonrecurring charges (i.e., late payment charges, capacity fees, subsequent connector fees, reconnection fees, etc.), in a manner and order solely the Town’s discretion, until all such fees and charges are fully satisfied.
2. Second, payments remaining after full satisfaction of rates, charges, and fees due and owing under paragraph (1) are applied to that portion of the Customer’s account owed for rates and charges from water service (i.e., monthly water rates, etc.).
3. Third, payments remaining after full satisfaction of rates, charges and fees due and owing under paragraphs (1) and (2) are applied to the remaining portion of the Customer’s account owed for rates and charges from sewer service (i.e., monthly sewer rates, etc.).

4. Fourth, payments remaining after full satisfaction of rates, charges, fees due and owing under paragraphs (1), (2), or (3) are applied to that portion of the Customer's account owed for Solid Waste and Recycling Services under this Ordinance (i.e., monthly trash rates, etc.).

The Public Works Department may, in its sole discretion, change the application order of payments. In the event of a dispute as to the classification of a fee, rate, charge, or otherwise under this subsection, all determinations by the Town as to the ultimate allocation of the specific payments shall be final.

Section 11. Fees are Reasonable and Just. The Council now finds that the proposed fees as adopted herein are reasonable and just and all requirements for adoption of this Ordinance have been met.

Section 12. Inconsistent Ordinances. All prior Ordinances or parts thereof inconsistent with any term or provision of this Ordinance are hereby repealed. All other provisions of such Ordinances shall remain unaltered and in full force and effect.

Section 13. Severability. In the event any one or more of the provisions contained in this Ordinance should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired and shall remain in full force and effect.

Section 14. Effective Date. This Ordinance shall be in full force and effect after its passage as provided under applicable law.

APPROVED AND ADOPTED by the Town Council of the Town of Whitestown, Indiana, on this ____ day of _____, 2017.

THE TOWN COUNCIL OF THE TOWN
OF WHITESTOWN, INDIANA

YAY/NAY

Eric Miller, President

Susan Austin, Vice-President

Kevin Russell

Clinton Bohm

Jeffrey Wishek

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

3207370

SCHEDULE A

Town of Whitestown

User Fee for Solid Waste and Recycling Service

Section A. Monthly Service Fee

Monthly Service Fee per Residential Unit:

Oct. 2017 – Sept. 2018 -	\$9.90 (\$10.55 with admin fee)
Oct. 2018 – Sept. 2019 -	\$10.10 (\$10.75 with admin fee)
Oct. 2019 – Sept. 2020 -	\$10.40 (\$11.05 with admin fee)
Oct. 2020 – Sept. 2021 -	\$10.65 (\$11.30 with admin fee)
Oct. 2021 – until modified	\$10.85 (\$11.50 with admin fee)

Section B. Other Charges. In addition to the fees set forth above, all Customers/Users (and owners of Residential Units) located within the Town shall be billed the following rates and charges when deemed appropriate.

- Section B.1. Administrative Fee. All Customers shall be subject to a monthly administrative fee to recoup administrative costs associated with management and billing in the amount of \$.65 per month.
- Section B.2. Container Charge. The cost of any replacement Containers in excess of one (1) per Residential Unit, plus applicable delivery fee, will be charged to the Customer.
- Section B.3. Overage Bags. Customers shall pay \$2.00 for each Overage Bag.
- Section B.4. Bulky Waste. Customers shall pay \$20.00 for each item of Bulky Waste the Customer requests be removed.
- Section B.5. Service Cycle. All Customers must pay for service one month in arrears.